

AMENDED IN SENATE JUNE 15, 2014

AMENDED IN ASSEMBLY MAY 15, 2013

AMENDED IN ASSEMBLY MAY 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 296

Introduced by Assembly Member Wagner

February 11, 2013

~~An act to amend Section 6062 of the Business and Professions Code, relating to attorneys.~~ *An act to amend Section 16350 of the Probate Code, relating to trusts, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 296, as amended, Wagner. ~~Attorneys.~~ *Trusts.*

Existing law generally requires a trustee to allocate money received from an entity to income. However, existing law requires a trustee to allocate to principal money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income taxes. Existing law also requires an allocation to principal of money received in total or partial liquidation of an entity. Existing law provides that money is to be treated as received in partial liquidation to the extent the amount received from the distributing entity is attributable to the proceeds from a sale by the distributing entity, or by the distributing entity's subsidiary or affiliate, of a capital asset, as defined.

This bill would provide that an allocation to principal of money received in total or partial liquidation of an entity does not include a

net short-term capital gain distribution from a regulated investment company or a real estate investment trust.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation. Existing law requires, among other requirements, that an individual who has been admitted to practice law in a sister state, United States jurisdiction, possession, territory, or dependency the United States may acquire, pass the general bar examination, or Attorneys' Examination, as specified, to be certified to the Supreme Court for admission, and a license to practice law. Existing law requires an individual who has been admitted to practice law in a jurisdiction other than a sister state, United States jurisdiction, possession, or territory, to have passed the general bar examination, as specified, among other requirements.~~

~~This bill would authorize a person who is an active member in good standing of the bar of a sister state or United States jurisdiction, possession, or territory to apply and be eligible to be certified to the Supreme Court for provisional admission and to receive a provisional license to practice law in California if the applicant meets certain requirements, including, among others, supplying evidence satisfactory to the State Bar that he or she is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders. The bill would require an applicant for a provisional license or a provisional licenseholder to take the first general bar examination or Attorneys' Examination, as specified, administered after the date the active duty member must report to a duty station in the state, except as provided. The bill would require the provisional licenseholder to abide by all the laws, rules, and regulations that govern fully licensed members of the State Bar and would also subject him or her to the same duties, responsibilities, and obligations and confer the same rights and benefits, as fully licensed members of the State Bar, except as provided. The bill would subject the provisional licenseholder to certain disclosure requirements and would authorize him or her to practice law in California only under the supervision of an attorney who is an active member in good standing of the State Bar of California. The bill would provide for the automatic and immediate termination of the provisional license under specified circumstances.~~

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 16350 of the Probate Code is amended
2 to read:

3 16350. (a) For the purposes of this section:

4 (1) “Entity” means a corporation, partnership, limited liability
5 company, regulated investment company, real estate investment
6 trust, common trust fund, or any other organization in which a
7 trustee has an interest other than a trust or decedent’s estate to
8 which Section 16351 applies, a business or activity to which
9 Section 16352 applies, or an asset-backed security to which Section
10 16367 applies.

11 (2) “Capital asset” means a capital asset as defined in Section
12 1221 of the Internal Revenue Code.

13 (b) Except as otherwise provided in this section, a trustee shall
14 allocate to income money received from an entity.

15 (c) A trustee shall allocate to principal the following receipts
16 from an entity:

17 (1) Property other than money.

18 (2) Money received in one distribution or a series of related
19 distributions in exchange for part or all of a trust’s interest in the
20 entity.

21 (3) Money received in total liquidation of the entity or in partial
22 liquidation of the entity, as defined in subdivision (d), *except for*
23 *money received from an entity that is a regulated investment*
24 *company or a real estate investment trust if the money distributed*
25 *is a net short-term capital gain distribution.*

26 (4) Money received from an entity that is a regulated investment
27 company or a real estate investment trust if the money distributed
28 is a capital gain dividend for federal income tax purposes. *A capital*
29 *gain dividend shall not include money received as a net short-term*
30 *capital gain distribution from a regulated investment company or*
31 *real estate investment trust.*

32 (d) For purposes of paragraph (3) of subdivision (c), money
33 shall be treated as received in partial liquidation to the extent the
34 amount received from the distributing entity is attributable to the
35 proceeds from a sale by the distributing entity, or by the distributing

1 entity's subsidiary or affiliate, of a capital asset. The following
2 shall apply to determine whether money is received in partial
3 liquidation:

4 (1) A trustee may rely without investigation on a written
5 statement made by the distributing entity regarding the receipt.

6 (2) A trustee may rely without investigation on other information
7 actually known by the trustee regarding whether the receipt is
8 attributable to the proceeds from a sale by the distributing entity,
9 or by the distributing entity's subsidiary or affiliate, of a capital
10 asset.

11 (3) With regard to each receipt from a distributing entity, if
12 within 30 days from the date of the receipt the distributing entity
13 provides no written statement to the trustee that the receipt is a
14 distribution attributable to the proceeds from a sale of a capital
15 asset by the distributing entity or by the distributing entity's
16 subsidiary or affiliate and the trustee has no actual knowledge that
17 the receipt is a distribution attributable to the proceeds from a sale
18 of a capital asset by the distributing entity or by the distributing
19 entity's subsidiary or affiliate, then the following shall apply:

20 (A) The trustee shall have no duty to investigate whether the
21 receipt from the distributing entity is in partial liquidation of the
22 entity.

23 (B) If, on the date of receipt, the receipt from the distributing
24 entity is in excess of 10 percent of the value of the trust's interest
25 in the distributing entity, then the receipt shall be deemed to be
26 received in partial liquidation of the distributing entity, and the
27 trustee shall allocate all of the receipt to principal. For purposes
28 of this subparagraph, the value of the trust's interest in the
29 distributing entity shall be determined as follows:

30 (i) In the case of an interest that is a security regularly traded
31 on a public exchange or market, the closing price of the security
32 on the public exchange or market occurring on the last business
33 day before the date of the receipt.

34 (ii) In the case of an interest that is not a security regularly traded
35 on a public exchange or market, the trust's proportionate share of
36 the value of the distributing entity as set forth in the most recent
37 appraisal, if any, actually received by the trustee and prepared by
38 a professional appraiser with a valuation date within three years
39 of the date of the receipt. The trustee shall have no duty to
40 investigate the existence of the appraisal or to obtain an appraisal

1 nor shall the trustee have any liability for relying upon an appraisal
2 prepared by a professional appraiser. The term “professional
3 appraiser” shall refer to an appraiser who has earned an appraisal
4 designation for valuing the type of property subject to the appraisal
5 from a recognized professional appraiser organization.

6 (iii) If the trust’s interest in the distributing entity cannot be
7 valued under clause (i) or clause (ii), the trust’s proportionate share
8 of the distributing entity’s net assets, to be calculated as gross
9 assets minus liabilities, as shown in the distributing entity’s yearend
10 financial statements immediately preceding the receipt.

11 (iv) If the trust’s interest in the distributing entity cannot be
12 valued under clause (i), (ii), or (iii), the federal cost basis of the
13 trust’s interest in the distributing entity on the date immediately
14 before the date of the receipt.

15 (e) If a trustee allocates a receipt to principal in accordance with
16 subdivision (d), or allocates a receipt to income because the receipt
17 is not determined to be in partial liquidation under subdivision (d),
18 the trustee shall not be liable for any claim of improper allocation
19 of the receipt that is based on information that was not received
20 or actually known by the trustee as of the date of allocation.

21 (f) (1) Notwithstanding anything to the contrary in subdivision
22 (d), if the receipt was allocated between December 2, 2004, and
23 July 18, 2005, a trustee shall not be liable for allocating the receipt
24 to income if the amount received by the trustee, when considered
25 together with the amount received by all owners, collectively,
26 exceeded 20 percent of the entity’s gross assets, but the amount
27 received by the trustee did not exceed 20 percent of the entity’s
28 gross assets.

29 (2) Money is not received in partial liquidation, nor may it be
30 taken into account under subdivision (d), to the extent that it does
31 not exceed the amount of income tax that a trustee or beneficiary
32 is required to pay on taxable income of the entity that distributes
33 the money.

34 *SEC. 2. This act is an urgency statute necessary for the*
35 *immediate preservation of the public peace, health, or safety within*
36 *the meaning of Article IV of the Constitution and shall go into*
37 *immediate effect. The facts constituting the necessity are:*

38 *In order to clarify state law relative to federal tax law regarding*
39 *capital gain dividends from a mutual fund or real estate investment*
40 *trust, it is necessary that this act take effect immediately.*

1 SECTION 1. ~~Section 6062 of the Business and Professions Code~~
2 ~~is amended to read:~~

3 ~~6062. (a) To be certified to the Supreme Court for admission,~~
4 ~~and a license to practice law, a person who has been admitted to~~
5 ~~practice law in a sister state, United States jurisdiction, possession,~~
6 ~~territory, or dependency the United States may hereafter acquire,~~
7 ~~shall:~~

8 ~~(1) Be at least 18 years of age.~~

9 ~~(2) Be of good moral character.~~

10 ~~(3) Have passed the general bar examination given by the~~
11 ~~examining committee. However, if that person has been an active~~
12 ~~member in good standing of the bar of the admitting sister state~~
13 ~~or United States jurisdiction, possession, or territory for at least~~
14 ~~four years immediately preceding the first day of the examination~~
15 ~~applied for, he or she may elect to take the Attorneys' Examination~~
16 ~~rather than the general bar examination. Attorneys admitted less~~
17 ~~than four years and attorneys admitted four years or more in another~~
18 ~~jurisdiction but who have not been active members in good~~
19 ~~standing of their admitting jurisdiction for at least four years~~
20 ~~immediately preceding the first day of the examination applied for~~
21 ~~must take the general bar examination administered to general~~
22 ~~applicants not admitted as attorneys in other jurisdictions.~~

23 ~~(4) Have passed an examination in professional responsibility~~
24 ~~or legal ethics as the examining committee may prescribe.~~

25 ~~(b) A person who is an active member in good standing of the~~
26 ~~bar of an admitting sister state or United States jurisdiction,~~
27 ~~possession, or territory may apply and shall be eligible to be~~
28 ~~certified to the Supreme Court for provisional admission, and to~~
29 ~~receive a provisional license to practice law in California, if the~~
30 ~~applicant meets all of the following requirements:~~

31 ~~(1) Is at least 18 years of age.~~

32 ~~(2) Files an Application for Determination of Moral Character~~
33 ~~with the State Bar of California and is determined to be of good~~
34 ~~moral character.~~

35 ~~(3) Has passed an examination in professional responsibility or~~
36 ~~legal ethics as the examining committee may prescribe.~~

37 ~~(4) Supplies evidence satisfactory to the State Bar that he or she~~
38 ~~is married to, or in a domestic partnership or other legal union~~
39 ~~with, an active duty member of the Armed Forces of the United~~

1 States who is assigned to a duty station in California under official
2 active duty military orders.

3 ~~(5) Establishes that he or she is an active member in good~~
4 ~~standing entitled to practice law in another state, United States~~
5 ~~jurisdiction, possession, or territory.~~

6 ~~(6) Establishes that he or she has never been subject to lawyer~~
7 ~~discipline and is not the subject of a pending disciplinary matter~~
8 ~~in any jurisdiction.~~

9 ~~(e) (1) An applicant for a provisional license or a provisional~~
10 ~~licenseholder as described in subdivision (b) shall apply for and~~
11 ~~take the general bar examination administered by the examining~~
12 ~~committee, except as provided in paragraph (2).~~

13 ~~(2) An applicant or provisional licenseholder who meets the~~
14 ~~requirements to take the Attorneys' Examination as specified in~~
15 ~~paragraph (3) of subdivision (a) may elect to apply for and take~~
16 ~~the Attorneys' Examination rather than the general bar~~
17 ~~examination.~~

18 ~~(3) An applicant or provisional licenseholder shall apply for~~
19 ~~and take the general bar examination or Attorneys' Examination~~
20 ~~pursuant to paragraphs (1) and (2), in compliance with the~~
21 ~~following:~~

22 ~~(A) Except as provided in subparagraphs (B) and (C), an~~
23 ~~applicant or provisional licenseholder shall apply for and take the~~
24 ~~first general bar examination or Attorneys' Examination~~
25 ~~administered after the date the active duty member of the Armed~~
26 ~~Forces of the United States must report to a duty station in~~
27 ~~California under official active duty military orders.~~

28 ~~(B) If the general bar examination or Attorneys' Examination~~
29 ~~is administered less than 90 days after the date the active duty~~
30 ~~member of the Armed Forces of the United States must report to~~
31 ~~a duty station in California under official active duty military~~
32 ~~orders, the applicant or provisional licenseholder shall apply for~~
33 ~~and take one of the following:~~

34 ~~(i) The first general bar examination or Attorneys' Examination~~
35 ~~administered after the date the active duty member of the Armed~~
36 ~~Forces of the United States must report to a duty station in~~
37 ~~California under official active duty military orders.~~

38 ~~(ii) The first general bar examination or Attorneys' Examination~~
39 ~~administered after the examination described in clause (i).~~

1 ~~(C) If the active duty member of the Armed Forces of the United~~
2 ~~States reported to a duty station in California under official active~~
3 ~~duty military orders before January 1, 2014, the applicant or~~
4 ~~provisional licenseholder shall apply for and take the general bar~~
5 ~~examination or Attorneys' Examination no later than July 2014.~~

6 ~~(d) A provisional licenseholder shall abide by all of the laws,~~
7 ~~rules, and regulations that govern fully licensed members of the~~
8 ~~State Bar of California, including payment of annual bar~~
9 ~~membership dues and compliance with the Minimum Continuing~~
10 ~~Legal Education requirements.~~

11 ~~(e) A provisional licenseholder shall be subject to the same~~
12 ~~duties, responsibilities, and obligations as fully licensed members~~
13 ~~of the State Bar of California and shall be conferred the same rights~~
14 ~~and benefits as fully licensed members of the State Bar of~~
15 ~~California subject to the following:~~

16 ~~(1) A provisional licenseholder may not advertise, hold out to~~
17 ~~the public, or otherwise represent that he or she is admitted or~~
18 ~~licensed to practice law in California unless the provisional~~
19 ~~licenseholder concurrently states that he or she is admitted to~~
20 ~~practice in California under a provisional license only.~~

21 ~~(2) A provisional licenseholder shall state in all written fee~~
22 ~~agreements and other contracts for legal services that he or she is~~
23 ~~admitted to practice in California under a provisional license only.~~

24 ~~(3) A provisional licenseholder may practice law in California~~
25 ~~only under the supervision of an attorney who is an active member~~
26 ~~in good standing of the State Bar of California.~~

27 ~~(f) A provisional license shall automatically and immediately~~
28 ~~terminate upon the earliest of any of the following:~~

29 ~~(1) Failure of the applicant or provisional licenseholder to apply~~
30 ~~for, take, and pass the general bar examination or Attorneys'~~
31 ~~Examination as required under subdivision (c).~~

32 ~~(2) A change resulting in the active duty member of the Armed~~
33 ~~Forces no longer being assigned to a duty station in California~~
34 ~~under official active duty military orders.~~

35 ~~(3) Divorce, dissolution, or legal termination of the marriage,~~
36 ~~domestic partnership, or other legal union with the active duty~~
37 ~~member of the Armed Forces of the United States who is assigned~~
38 ~~to a duty station in California under official active duty military~~
39 ~~orders.~~

1 ~~(g) A provisional license shall automatically be superseded and~~
2 ~~immediately terminate upon the issuance of a full license to practice~~
3 ~~law in California to the provisional licenseholder.~~

4 ~~(h) To be certified to the Supreme Court for admission, and a~~
5 ~~license to practice law, a person who has been admitted to practice~~
6 ~~law in a jurisdiction other than in a sister state, United States~~
7 ~~jurisdiction, possession, or territory shall:~~

8 ~~(1) Be at least 18 years of age.~~

9 ~~(2) Be of good moral character.~~

10 ~~(3) Have passed the general bar examination given by the~~
11 ~~examining committee.~~

12 ~~(4) Have passed an examination in professional responsibility~~
13 ~~or legal ethics as the examining committee may prescribe.~~

14 ~~(i) The amendments to this section made at the 1997–98 Regular~~
15 ~~Session of the Legislature shall be applicable on and after January~~
16 ~~1, 1997, and do not constitute a change in, but are declaratory of,~~
17 ~~existing law.~~